98TH CONGRESS
*1st Session*

SENATE

REPORT
No. 98-272

# NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT

OCTOBER 19 (legislative day, OCTOBER 17), 1983.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

## REPORT

[To accompany H.R. 2809]

The Committee on Environment and Public Works, to which was referred the Act (H.R. 2809) to establish a National Fish and Wildlife Foundation, having considered the same, reports favorably thereon with amendments and recommends that the Act (as amended) do pass.

### PURPOSE OF THE LEGISLATION

The purpose of H.R. 2809 is to establish a National Fish and Wildlife Foundation. This nonprofit, charitable Foundation will encourage gifts such as real and/or personal property, as well as income derived therefrom, and trusts, to be used to further the conservation and management of fish, wildlife, and plants.

### LEGISLATIVE HISTORY

S. 1271, a companion bill to H.R. 2809, was introduced in the Senate on May 12, 1983 by the following members of the Committee on Environment and Public Works: Senators Chafee, Stafford, Randolph, Mitchell, Bentsen, Baker, and Domenici. Senators Moynihan, Durenberger, Burdick, Simpson, and Abdnor, also members of the Committee, as well as 14 other Senators later cosponsored the measure.

The Subcommittee on Environmental Pollution held hearings on the legislation on May 19, 1983. On September 22, 1983 the Subcommittee recommended that H.R. 2809, with amendments, be adopted as a substitute to S. 1271. The Committee on Environment and Public Works, by voice vote, unanimously approved H.R. 2809, with amendments, on September 28, 1983.

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S323-22.

## SUMMARY OF PROVISIONS

H.R. 2809 would create a federally chartered, charitable, nonprofit corporation to accept and administer gifts from private citizens for the purposes of fish, wildlife, and plant conservation. The legislation is modeled after similar legislation for the National Park Foundation. By virtue of its Federal charter and independent status, the Foundation offers a means for expanding cooperation between the private and public sectors. It is designed to be a structure through which the Fish and Wildlife Service will work with the leaders of the private sector on a continuing basis in an atmosphere of mutual respect and trust.

The Foundation would have a Board of nine members, all appointed by the Secretary of the Interior, who would serve six-year terms. The terms of the initial Board are to be staggered and the legislation requires that the Board represent diverse points of view relating to fish and wildlife conservation. At least 3 of the members must be educated and experienced in the principles of fish and wildlife management. For the 10-year period beginning October 1, 1984, $1 million is authorized to be appropriated to match, on a one-to-one basis, private contributions to the Foundation.

As originally introduced, section 5 of H.R. 2809 set forth various tax exemptions applicable to the Foundation. As amended by the House Committee on Ways and Means, passed by the House of Representatives and approved by the Committee on Environment and Public Works, the bill does not address the tax status of the Foundation or the deductibility of gifts to the Foundation. Instead, the House Committee amended H.R. 2163, which makes amendments to the Federal Boat Safety Act of 1971, to address this issue. H.R. 2163 provides that the National Fish and Wildlife Foundation, established in H.R. 2809, shall be treated as an organization described in section 501(c)(3) of the Internal Revenue Code upon its establishment. As such, the Foundation will be exempt from Federal income tax and will be eligible to receive tax-deductible contributions. The Foundation will retain its status as an organization described in section 501(c)(3) so long as it satisfies all requirements of the Internal Revenue Code relating to such organizations. H.R. 2163 passed the House on July 12, 1983 and was referred to the Senate Finance Committee.

H.R. 2809 was amended by the Committee on Environment and Public Works in the following manner: Section 2(b) was amended to include the conservation and management of plants as a purpose of the Foundation; section 3(b) was amended to require the Secretary of the Interior to fill vacancies on the Foundation Board within 60 days; section 4(c)(5) was amended to provide gross negligence, not malfeasance, as the personal liability standard for directors of the Board; and section 10 was amended to authorize appropriations beginning October 1, 1984 instead of October 1, 1983.

## BACKGROUND AND NEED

On November 8, 1978, the President signed into law the Fish and Wildlife Improvement Act of 1978 (P.L. 95–616). This law authorized the Secretary of the Interior to accept gifts or bequests of real

and/or personal property, or income therefrom, for the benefit of the U.S. Fish and Wildlife Service. Any gifts or proceeds from the sale of properties were to be deposited into a separate account at the Department of the Treasury where these monies would be dispersed for the benefit of the U.S. Fish and Wildlife Service pursuant to an order by the Secretary of the Interior.

While this Act provided the U.S. Fish and Wildlife Service with some valuable migratory bird habitat, it did not provide a mechanism by which assets could be managed or invested over a long period of time. Consequently persons or organizations could not leave trusts or other assets in perpetuity to the Fish and Wildlife Service. This legislation addresses the long term problems not anticipated in the Fish and Wildlife Improvement Act of 1978.

In addition, by establishing a National Fish and Wildlife Foundation, similar to the National Park Service Foundation (P.L. 90–209), the legislation would establish another mechanism whereby the U.S. Fish and Wildlife Service could, through the Foundation, acquire habitat and provide management programs to benefit fish, wildlife, and plant conservation. With budget restrictions continually reducing the ability of the Service to address fish, wildlife, and plant conservation problems, the need for such support is clear. The Foundation could also conduct other activities to further the conservation and management of fish, wildlife, and plant resources.

## SECTION-BY-SECTION ANALYSIS

*Section 1—Short title*

Section 1 of the bill states that the bill may be referred to as the "National Fish and Wildlife Foundation Establishment Act."

*Section 2—Establishment and purposes of foundation*

Subsection (a) of this section establishes the National Fish and Wildlife Foundation (Foundation) as a not-for-profit organization. The Foundation is not to be considered an agency or establishment of the United States Government.

Subsection (b) outlines the purposes of the Foundation in general terms. These are to encourage, accept, and manage private donations for the benefit of the U.S. Fish and Wildlife Service and to conduct such other activities as will further the conservation and management of fish, wildlife, and plant resources. The language of this section is intentionally broad to allow for a wide range of activities that will provide benefits to the Service and the Nation's wildlife resources.

*Section 2.—Establishment and purposes of Foundation*

Subsection (a) of this section establishes a Board of Directors to govern the Foundation, consisting of nine members, who must be citizens of the United States. The provisions relating to the establishment of the Board of Directors provide that the Board should consist of persons who are knowledgeable or experienced in fish and wildlife conservation and who represent diverse points of view relative to conservation issues. The wildlife conservation community includes people who are interested in wildlife for a variety of reasons, including hunting, fishing, wildlife observation, or as part of a larger interest in

environmental issues. While it is obviously not possible, or advisable, for every point of view relating to fish and wildlife conservation to be represented, the Secretary should at least appoint Directors that represent the major fish and wildlife conservation constituencies.

The requirement that three Directors be educated and experienced in the principles of fish and wildlife management is designed to ensure that projects approved by the Board have genuine merit in terms of wildlife management. The general requirements of knowledge or experience for the remaining Directors are to be read broadly. Persons who display an interest in conservation issues yet have no specific knowledge or experience in the area of fish or wildlife conservation could still qualify as a Director.

Subsection (a) of section 3 also provides that the Director of the U.S. Fish and Wildlife Service is to serve as a non-voting and ex officio member of the Board. It also states that Directors shall not be considered employees of the U.S. Government. This provision is not designed to prevent Federal employees from serving as Directors. In fact, the appointment of Federal employees could be beneficial to the activities of the Foundation.

Subsection (b) states that the Secretary of the Interior will appoint the Directors to the Foundation Board. Each Director will serve a six-year term, except for the initial Directors, whose terms are to be staggered to ensure a diverse and well-rounded Board.

If, for some reason, a Director is unable to fill his or her appointed term, the Secretary of the Interior will, within sixty days, appoint a qualified person to fill the remainder of the previous Director's term. No Director will be allowed to serve more than two full, consecutive terms. If a person is appointed to fulfill an unexpired term of a former Director, that partial term will not be considered a full term.

Subsection (c) states that the Chairman will be elected by the Directors every two years.

Subsection (d) establishes that a majority of the Directors (5 or more) constitutes a quorum.

Subsection (e) states that the Board of Directors shall meet at least once a year and may meet more often, subject to the discretion of the Chairman. If a Director misses three consecutive meetings, then his seat may be declared vacant. At that time, the Secretary of the Interior would appoint someone to fill the unexpired term.

Subsection (f) states that the Directors are not to draw a salary for serving on the Foundation Board. However, the Directors may be reimbursed for any expenses incurred in the performance of their duties as Directors on the Foundation Board. These expenses should not exceed Federal per diem and travel allowances.

Subsection (g) outlines the powers of the Board of Directors. The Foundation Board may appoint officers, including a Secretary of the Board, who shall be the Chief Operating Officer, and other employees. The Secretary is to be the first employee appointed by the Board of Directors and it is the intent of the Committee that the Secretary be a person with considerable experience in matters relating to fish and wildlife conservation. The Board may also adopt a constitution to govern the Foundation pursuant to the purposes of this Act.

Subsection (g) also provides that no officers or employees can be appointed until the Foundation is financially able to pay these employees. These employees and officers are not subject to the civil service pay schedule; however, none of the employees or officers are to receive a salary which is higher than a GS–18 equivalent on the Civil Service pay schedule. The Committee also intends that any fringe benefits provided Foundation staff be comparable to those provided Federal employees.

*Section 4—Rights and obligations of the Foundation*

Subsection (a) establishes the Foundation in perpetuity, for as long as the Foundation operates in a reasonable and prudent manner.

The Foundation may conduct business throughout the United States, its territories and its possessions. The Foundation will have its headquarters established in the District of Columbia.

The Foundation must have a designated agent to accept service of process.

The Foundation is required to register in the States, possessions, and territories it is doing business in, if the States, U.S. possessions, or territories require registration. This Act does not intend to supersede any State laws governing charitable organizations.

Subsection (b) provides that the Foundation shall have an official stamp which shall be judicially noticed.

Subsection (c) outlines the powers and functions of the Foundation. The Foundation has the usual powers accorded to a corporation acting as a trustee in the District of Columbia. The Foundation must adhere to the laws governing such non-profit corporations in the District of Columbia.

The Foundation has the ability to accept, receive, and solicit gifts or bequests. These gifts can be in any form such as money, trusts, securities, real and/or personal property, or interest and/or personal property, or interest and/or income therefrom. The Foundation is not bound by this Act to accept all gifts or donations offered to it.

The Foundation has full authority to manage any and all donations by either selling, holding, investing, or reinvesting the donations. The Foundation also has the authority to transfer lands to the U.S. Fish and Wildlife Service for conservation purposes.

The Foundation should acquire conservation areas that would contribute to the management goals of the U.S. Fish and Wildlife Service but should not engage in the management of conservation areas. For this reason, the Foundation should only acquire lands for conservation purposes that have been identified by the Service, the Migratory Bird Commission, or a State agency as having particular value as wildlife habitat.

The Foundation has full authority to dispose or trade real or personal property, with little or no conservation value, in order to obtain real property or other assets with fish, wildlife, and plant conservation value.

A gift of real property can include fee title to the property, easements, conservation, protection, or other preservation mechanisms. Real property can be donated or sold to the Foundation for its natural, scenic, historic, scientific, educational, inspirational, or recreational

values. A gift may be accepted by the Foundation even if it has restrictions placed on the donation or the donation is subject to certain requirements, provided that the Foundation benefits from the donation in the short or long term.

The Foundation has authority to raise money in the capital markets using debt instruments such as bonds or to borrow from a lending institution. The Federal Government is not responsible for any debt incurred by the Foundation.

The Foundation is subject to any lawsuits and litigation under law and is responsible for its own defense. The Board of Directors cannot personally be held liable for any action by the Foundation, except for gross negligence by a Director or Directors.

The Foundation may conduct normal business with public and private groups or organizations using normal business practices and may enter into contractual agreements with other organizations.

Subsection (d) does not attempt to supersede the States' rights to condemn land for uses by the State. This provision does protect from State or local condemnation those lands determined by either the Director of the Fish and Wildlife Service or the Migratory Bird Commission, to be valuable for purposes of fish and wildlife conservation.

*Section 5—Administrative services and support*

The Secretary of the Interior has the authority to provide personnel, either on detail or assignment, to the Foundation to help meet its operational needs for a period of five years from the date of enactment of this Act.

The Secretary can also provide the Foundation with facilities and other administrative support.

The Secretary of the Interior, upon providing the technical support listed above, will keep a record of expenses incurred by the Department of the Interior and may accept reimbursement from the Foundation for the services provided to it.

*Section 6—Volunteer status*

Volunteers are encouraged to work for the Foundation, under the guidance of its Board of Directors and employees, without compensation. The volunteers are not to be considered as Federal employees and are not to be subject to any Civil Service laws, rules, or regulations.

*Section 7—Audits, report requirements, and petition of Attorney General for equitable relief*

Subsection (a) states that the Foundation is required to publish an annual audit. This audit will be performed by an independent certified public accountant. The Foundation is also subject to audits by U.S. Government agencies.

This audit will contain a complete financial statement, including a complete itemized inventory of the Foundation's holdings and their current value, as well as current assets, current liabilities, long term assets, long term liabilities, and a statement of retained earnings.

Subsection (b) requires that the Foundation annually transmit this financial report to Congress as well as a statement explaining the activities and proceedings of that particular year.

Subsection (c) gives the Attorney General the power to seek equitable relief if the Foundation does not meet the obligations and responsibilities set forth in this Act.

*Section 8—U.S. release from liability*

The United States Government is not responsible for any debts incurred or obligations made by the Foundation.

*Section 9—Amendment and repeal*

The Congress of the United States reserves the right to amend and/or repeal this Act at any time. The by-laws and charter of the Foundation will be amended to reflect any additional Congressional action.

*Section 10—Authorization of appropriations*

H.R. 2809, as amended, authorizes to be appropriated a sum of up to $1 million for the ten-year period beginning October 1, 1984 to the Department of the Interior.

This money will be used to match, on a one-to-one basis, private contributions made to the Foundation. Money from this appropriation can also be used to provide administrative services under section 6 of this Act.

COST OF LEGISLATION

In accordance with section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared a report on the costs to be incurred by the Federal Government resulting from the enactment of this bill. Such costs estimates follow:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, D.C., September 30, 1983.*

Hon. ROBERT T. STAFFORD,
*Chairman, Committee on Environment and Public Works, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 2809, the National Fish and Wildlife Foundation Establishment Act.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

SEPTEMBER 30, 1983.

1. Bill number: H.R. 2809.
2. Bill title: National Fish and Wildlife Foundation Establishment Act.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, September 28, 1983.
4. Bill purpose: The bill establishes a National Fish and Wildlife Foundation to further the conservation and management of the fish and wildlife resources of the United States, and its territories and possessions. The foundation would be a charitable, nonprofit organization governed by a nine-member board of directors. Section 11 of the bill would authorize the appropriation of $1 million for a ten-year period beginning in fiscal year 1985 for matching private contributions to the

foundation and for a five-year period to provide administrative services.

5. Estimated cost to the Federal Government:

| | Millions |
|---|---|
| Authorization level: | |
| Fiscal year: | |
| 1984 | ---- |
| 1985 | $0.1 |
| 1986 | .1 |
| 1987 | .1 |
| 1988 | .1 |
| Estimated outlays: | |
| Fiscal year: | |
| 1984 | ---- |
| 1985 | .1 |
| 1986 | .1 |
| 1987 | .1 |
| 1988 | .1 |

The costs of this bill fall within budget function 300.

*Basic of estimate*

This estimate assumes that the full $1 million authorized will be appropriated in approximately equal amounts over the ten-year period. It is assumed that approximately $300–$500 thousand will be used over the ten-year period for matching private contributions. Based on information from the U.S. Fish and Wildlife Service and the National Park Service, it is estimated that the remaining funds would be spent on administrative reimbursements, pursuant to section 6 of the bill.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 13, 1983 CBO prepared a cost estimate on H.R. 2809 for the House Committee on Merchant Marine and Fisheries which established a National Fish and Wildlife Foundation. On July 1, 1983 CBO prepared a cost estimate for H.R. 2809, as amended, for the House Ways and Means Committee. The estimated cost of this bill is identical to the previous cost estimates.

9. Estimate prepared by: Mary Ann Curtin.

10. Estimate approved by:

C. G. Nuckols
(For James L. Blum,
Assistant Director for Budget Analysis).

## HEARINGS

Hearings were held on this legislation by the Subcommittee on Environmental Pollution on May 19, 1983.

## ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report. No rollcall votes were taken on this legislation.

## REGULATORY IMPACT EVALUATIONS

Section 11(b) of rule XXVI of the Standing Rules of the Senate require the Committee to evaluate the regulatory impact of the reported bill.

It is not anticipated that this bill will impose any significant new regulatory burden.

## CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires publication of the changes in existing law made by the reported bill. No changes were made in existing law.

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